



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 21

RIN 2900-AP72

Veterans Employment Pay for Success Grant Program

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) is establishing a grant program (Veterans Employment Pay for Success (VEPFS)) under the authority of the U.S.C. to award grants to eligible entities to fund projects that are successful in accomplishing employment rehabilitation for Veterans with service-connected disabilities. VA will award grants on the basis of an eligible entity's proposed use of a Pay for Success (PFS) strategy to achieve goals. This interim final rule establishes regulations for awarding a VEPFS grant, including the general process for awarding the grant, criteria and parameters for evaluating grant applications, priorities related to the award of a grant, and general requirements and guidance for administering a VEPFS grant program.

DATES: Effective Date: This rule is effective on [insert date of publication in the FEDERAL REGISTER].

Comment Date: Comments must be received on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Written comments may be submitted through www.Regulations.gov; by mail or hand-delivery to Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to “RIN 2900-AP72 – Veterans Employment Pay for Success Grant Program.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT: Patrick Littlefield, Director, VA Center for Innovation, Department of Veterans Affairs, (08), 810 Vermont Ave, NW., Washington, DC, (202) 256-7176. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: VA’s Vocational Rehabilitation & Employment (VR&E) Service provides services and assistance necessary to enable Veterans with compensable service-connected disabilities and employment barriers to achieve maximum independence in daily living and, to the maximum extent feasible, to become employable and to obtain and maintain suitable employment. (A Veteran with a noncompensable service-connected disability is not entitled to vocational rehabilitation services and assistance under chapter 31 of title 38, United States Code. See 38

U.S.C. 3102.) Section 3119 of title 38, United States Code, authorizes the Secretary of Veterans Affairs (Secretary) to make grants to or contract with public or nonprofit agencies, including institutions of higher learning, to advance “the knowledge, methods, techniques, and resources available for use in rehabilitation programs for veterans.” Section 3119 specifically authorizes the Secretary to make grants to such agencies to conduct or provide support for projects which are “designed to increase the resources and potential for accomplishing the rehabilitation of disabled veterans.” (See also implementing regulation at 38 CFR 21.390.)

PFS is a strategy for successfully attaining positive social or environmental outcomes by paying for an intervention to achieve such outcomes only after the intervention produces these outcomes. Using a PFS strategy, a party to an agreement agrees to pay for services for specific people or communities in need of particular services only if and when an agreed-upon set of outcomes related to meeting the people’s or communities’ needs has been achieved or a level of impact has been verified. Instead of funding services regardless of the results, payments are made only if interventions achieve the outcomes agreed upon in advance. For example, instead of paying for the provision of job training without knowing whether such training will have a successful result, an entity might use a PFS strategy to pay for the provision of job training only when individuals gain stable employment in good jobs. When the party committed to pay for outcomes is a Government entity, taxpayers will not have to pay for ineffective services. However, the party that provides services may not have the funding for the services before outcomes are measured. PFS agreements can

incorporate PFS financing, sometimes referred to as “social impact bonds,” to cover the costs of the services until success is achieved and payments are due. PFS financing involves third-party, independent investors that provide the financing necessary to carry out the intervention. In addition, a PFS model typically involves a project coordinator or intermediary to facilitate and manage the project, a service provider to deliver the intervention, and an independent evaluator to determine whether the intervention achieves the desired outcomes.

There is a need to find new, innovative methods for rehabilitating Veterans with compensable service-connected disabilities (as defined in 38 CFR 3.1(k)) who qualify for benefits under VA’s VR&E program so that they become employable and are ultimately able to obtain and maintain suitable employment. Through PFS grant programs, which may serve various Veteran populations including those Veterans with noncompensable service-connected disabilities who do not qualify for VR&E benefits, we hope to obtain information to establish new, innovative methods for rehabilitating Veterans who qualify for VR&E benefits. PFS offers an economical mechanism, which can save taxpayers’ money, for exploring the resources and techniques that are available for rehabilitating Veterans with service-connected disabilities with regard to employment. We interpret the authority in Sec. 3119 to award grants to conduct or provide support for projects which are designed to increase the potential for accomplishing the rehabilitation of disabled Veterans broadly, to allow for the funding of projects that serve Veterans with either compensable or noncompensable service-connected disabilities. By funding projects that serve Veterans with either compensable or noncompensable service-connected disabilities, there is increased potential to

discover new techniques and resources for use in VA's VR&E program to enable Veterans who qualify for VR&E services to become employable and to obtain and maintain suitable employment.

Accordingly, under the authority of Sec. 3119, VA will award grants to eligible entities that will become "outcomes payors," to administer payment for outcomes of interventions that are successful in accomplishing employment rehabilitation for Veterans with service-connected disabilities. In other words, VA will fund outcomes of projects that achieve favorable employment outcomes related to success in the ability or potential to secure or sustain stable employment or to achieve increased earnings of Veterans with service-connected disabilities. The funding will be referred to as "outcomes payments" and the grant known as the "Veterans Employment Pay for Success (VEPFS)" grant. This interim final rule establishes regulations for awarding a VEPFS grant, including the general process for awarding the grant, criteria and parameters for evaluating grant applications, priorities related to the award of a grant, and general requirements and guidance for administering a VEPFS grant program.

§ 21.440 Purpose and scope

Section 21.440 sets forth the purpose of a VEPFS grant program and explains what the program provides. This section indicates that VA may provide a grant to an eligible entity to fund outcomes payments for a project that achieves favorable employment outcomes for Veterans with service-connected disabilities. There is a need to find new and innovative methods for rehabilitating Veterans with compensable service-connected disabilities with regard to employment and, as noted above, the

VEPFS grant program offers an economical mechanism, which can save taxpayers' money, for exploring the resources and techniques that may be available to address that need.

§ 21.441 Definitions

Section 21.441 defines terms used in §§ 21.440-21.449 and any Notices of Funding Availability (NOFA) issued pursuant to §§ 21.440-21.449. The definitions are set out in the regulatory text, but we elaborate on some of them as follows:

“Eligible entity” is defined as a public or nonprofit agency, to include institutions of higher learning. Section 3119 of title 38, United States Code, provides authorization to make grants to public or nonprofit agencies, including institutions of higher learning. We interpret the term “nonprofit agency,” as used in Sec. 3119, to include tax-exempt, incorporated or unincorporated organizations that serve the public interest and generally have a charitable, educational, scientific, religious, or literary goal. We interpret the term “public agency”, as used in Sec. 3119, to include the government of the United States or of a State or political subdivision of a State.

“Employment outcome” is defined as the employment or earnings of a participant in the intervention or control group member after the service period. The VEPFS program will measure certain outcomes, including competitive employment, skill development, achieving a sustained period of employment, wage-earnings, and achieving employment that aligns with the interests and aptitude of the job seeker. Improving employment outcomes means creating positive impact in terms of these

outcomes, where the results for individuals that receive the intervention are better than the results for a valid control group that did not receive the intervention.

“Intervention” is defined as a service or technology that is provided to individuals and intended to achieve certain results. Examples of service interventions or technological interventions to improve Veteran employment outcomes include, but are not limited to, support services, employment coaching, mental health treatment, vocational training, occupational therapy, community engagement, and outreach.

“Project partnership” is defined as a collaboration among entities that negotiate an agreement and execute a project to improve employment outcomes for Veterans with service-connected disabilities. For the purpose of the VEPFS grant program, a project partnership is not a distinct legal entity. Section 21.441 includes definitions for the entities that may be involved in a project partnership.

“Social finance strategy” is defined as a method for securing financial resources using an investment approach that focuses on achieving positive social and/or environmental impact with some form of financial return. Examples of social finance strategies include: 1) matching taxpayer dollars with non-government contributions to extend the impact of not-for-profit organizations; 2) simplifying access to government funding for community organizations and institutions of higher learning.

“Strong evidence” is defined as results from previous studies, the designs of which can support causal conclusions (i.e., studies with high internal validity), which include enough of the range of participants and settings to support scaling up to the state, regional, or national level (i.e., studies with high external validity). The following are examples of strong evidence: (1) more than one well-designed and well-

implemented experimental study or well-designed and well-implemented quasi-experimental study that supports the effectiveness of the practice, strategy, or program; or (2) one large, well-designed and well-implemented randomized controlled, multisite trial that supports the effectiveness of the practice, strategy, or program.

“Work-plan” is defined as a document that articulates tasks and milestones with regard to a particular project. A work plan contains a detailed overview of all activities that will be undertaken to complete a project, and the goals, objectives, outcomes, responsible parties, and timeline for each task of a project, which collectively serve as the roadmap for execution of project tasks.

§ 21.442 VEPFS grants – general

Section 21.442 provides general information pertaining to VEPFS grants. Section 21.442(a) establishes that only an eligible entity may receive a VEPFS grant. Section 21.442(b) establishes that the available grant funding amount will be specified in the NOFA. The amount of funding VA may provide in a VEPFS grant is not limited by or otherwise specified in statute. In addition, VA may combine its funds with funds of another Federal entity to increase the amount available for a VEPFS project. VA will determine the amount of funding available for an individual VEPFS project, including any contributions from another Federal agency, on a case-by-case basis and will announce the amount of available grant funding for that VEPFS project in the applicable NOFA. Section 21.442(c) states that the period for a VEPFS grant will be a minimum of 5 years and a pre-determined maximum number of years, as specified in the NOFA, beginning on the date on which the VEPFS grant is awarded, with the availability of no-

cost extensions. At the end of the pre-determined maximum period, the effectiveness of the project will be assessed to determine the project's success. Five years is the minimum length of time necessary to maximize the effectiveness of a project and obtain meaningful data on a project's success through periodic reporting. This timeframe allows 1 year to develop, refine and launch the project, 3 years for service delivery to produce outcomes and data, and 1 year for a thorough evaluation of outcomes. Section 21.442(d) specifies that a recipient must provide matching funds from non-Federal sources that are at least equal to or greater than the amount of Federal grant funds awarded, which will be combined with the amount of Federal grant funds awarded to be used to fund the proposed PFS project as a condition of receiving a VEPFS grant. Requiring matching funds increases the amount of available funding for VEPFS projects. Section 21.442(e) specifies that a VEPFS grant is not a Veterans' benefit, and, therefore, any decisions of the Secretary as to whether to award a VEPFS grant are final and not subject to the same rights of appeal as decisions related to Veterans' benefits.

§ 21.443 Permissible uses of VEPFS grant funds

Section 21.443(a) specifies that VEPFS grant funds may be used to make outcomes payments only if an intervention achieves outcomes at a pre-set level that has been agreed to in a PFS agreement before service delivery begins for a PFS project with a goal to improve employment outcomes for Veterans with service-connected disabilities. As stated above, the reason for using a PFS strategy is to avoid using taxpayer dollars for ineffective services and therefore save taxpayer money. VA

is specifically funding PFS projects that aim to improve employment outcomes for Veterans with service-connected disabilities to carry out Congress' intention that VA "advance the knowledge, methods, techniques, and resources available for use in rehabilitation programs for veterans" and increase the "potential for accomplishing the rehabilitation of disabled veterans."

In addition, to cover the indirect costs of administering the grant (costs associated with general administration and expenses), § 21.443(b) allows a recipient to use a Federally approved indirect cost rate (a rate already negotiated with the Federal Government), use a 10% de minimis rate of modified total direct costs, negotiate an indirect cost rate for the first time, or claim certain costs directly following 2 CFR 200.413 so as to not limit the pool of eligible applicants to entities that will use a particular permissible option. This is consistent with regulatory guidance to Federal agencies that provide grant awards to non-Federal entities, including States, local governments, Indian tribes, institutions of higher education, and non-profit organizations issued by the Office of Management and Budget (OMB) and codified in in part 200 of title 2 of the Code of Federal Regulations. 2 CFR 200.414; *see also* 2 CFR 200.69. These administrative costs may be claimed before outcomes are measured and regardless of whether outcomes are achieved at pre-set levels.

§ 21.444 Notice of funding availability

Section 21.444 states that when funds are available to award a VEPFS grant, VA will publish a NOFA announcing the funding opportunity in the Federal Register and on Grants.gov (<http://www.grants.gov>) providing specific details about the opportunity.

Section 21.444, in paragraphs (a)-(f), lists generally the information the NOFA will include. Section 200.203 of title 2, Code of Federal Regulations, requires the issuance of a NOFA, which includes specific identifying information, information describing the funding opportunity, and information regarding the award, eligibility, application, application review, and Federal award administration. OMB requires the issuance of a NOFA and publication of this information to ensure that eligible entities have the information required to apply for grants.

§ 21.445 Application

Section 21.445 identifies VEPFS grant application procedures and the information required to constitute a complete application package. This section requires eligible entities to submit a complete grant application package, in accordance with instructions provided in the NOFA through Grants.gov ([http:// www.grants.gov](http://www.grants.gov)) to apply for a VEPFS grant. Use of this website is the easiest and most efficient way to process grant applications. Furthermore, eligible entities submitting an application for a VEPFS grant will likely be familiar with this website. In describing the information a complete application package must contain, paragraph (a) requires the complete application to contain a project description, including a description of the intervention, the Veteran population to be served, and anticipated employment outcomes. VA needs this information to determine whether the project proposed has a reasonable chance of providing positive employment outcomes for Veterans with service-connected disabilities. Paragraph (b) requires the complete application to contain a description of the anticipated project partnership(s), including the responsibilities of each of the

partner entities, the experience of any involved entities with serving Veteran populations, and other qualifications of the involved entities that may be relevant in carrying out responsibilities of the project partnership. VA needs this information to assess the likelihood of success an applicant will have carrying out a VEPFS project. In addition, paragraph (b) informs applicants that, in procuring partners such as the project coordinator and investor, procurement standards set forth in 2 CFR 200.317-200.326 must be followed. Paragraph (c) requires the complete application to include a work plan with a budget and timelines. These disclosures will help reviewers assess how close the project is to beginning to provide services and the extent to which an applicant has considered all aspects of planning. Paragraph (d) requires the complete application to contain a description of applicant's expertise or experience with PFS or other social finance strategies or experience administering programs that serve Veterans with disabilities. Paragraph (e) requires the complete application to include documentation of an applicant's ability and capacity to administer the project. Having the information obtained from the requirements of paragraphs (d) and (e) will also allow VA to assess the likelihood of success of a VEPFS project. Paragraph (f) requires the complete application to include proof of matching funds already secured, the applicant's ability to secure matching funds, or commitments of matching funds the applicant has received. Reviewers need this documentation to confirm an applicant's ability to meet the VEPFS grant funding requirements. Paragraph (g) requires that the complete application contain any additional information VA deems appropriate and sets out in the NOFA so that VA can tailor the NOFA as necessary.

§ 21.446 Scoring and selection

Section 21.446(a) states that VA will score only complete applications received from eligible entities by the deadline established in the NOFA and identifies the criteria to be used in selecting a recipient. Selection of a recipient will be based on the likelihood of successful implementation of the project and the likelihood that the project will meet objectives. The information described in § 21.446(a) will allow VA to make such determination regarding the likelihood of project success.

Section 21.446(b) indicates that NOFA announcements may clarify the selection criteria in paragraph (a) and will specify the relative weight (point value) assigned for each selection criterion according to the criterion's importance in ensuring the successful development and implementation of a VEPFS project and that eligible entities will be ranked in order from highest to lowest total score. This section also indicates that VA will award any VEPFS grant on the primary basis of scores but will also consider a risk assessment evaluation.

§ 21.447 VEPFS grant agreement

Section 21.447 states that VA will draft a grant agreement for execution between VA and the applicant selected to receive a VEPFS grant, and VA will obligate the grant funds to cover the amount of the approved grant, subject to the availability of funding, upon execution of the agreement. This section also states that the VEPFS grant agreement will provide that the recipient agrees (and will ensure that any subcontractors agree) to: operate the program in accordance with the provisions of §§ 21.440-21.449, 2 CFR part 200, and the applicant's VEPFS grant application; comply with such other

terms and conditions, including recordkeeping and reports for program monitoring and evaluation purposes, as VA may establish for purposes of carrying out the VEPFS program in an effective and efficient manner; and provide any additional information VA requests in the manner and timeframe VA specifies. Part 200 provides uniform guidance and government-wide terms and conditions for the management of awards and the administration of Federal grants, and this rulemaking provides additional guidance and conditions for the administration of VEPFS grants in particular.

Adherence to the government-wide rules is mandatory and compliance with the additional rules specific to VEPFS grants will ensure program integrity across any VEPFS grants VA awards. In addition, timely and accurate reporting is critical to allow VA to evaluate the VEPFS program.

§ 21.448 Recipient reporting requirements

Section 21.448 requires recipients to submit a quarterly report 30 days after the close of each Federal fiscal quarter of the grant period that includes a detailed record of the time involved and resources expended administering the VEPFS program; the number of Veterans served, including demographics of this population; the types of employment assistance provided; a full accounting of VEPFS grant funds used or unused during the quarter; a comparison of accomplishments related to the objectives of the award; an explanation for any goals not met; and an analysis and explanation for any cost overruns. With such information, VA can effectively analyze program performance and ensure that a recipient is using grant funds in accordance with the grant agreement. In addition, § 21.448 requires recipients to provide additional reports

if necessary to allow VA to assess program accountability and effectiveness on an ongoing basis.

§ 21.449 Recovery of funds

Section 21.449 specifies that VA can impose additional conditions as specified in 2 CFR 200.207 if a recipient fails to comply with any Federal statutes or regulations or the terms and conditions of an award made under §§ 21.440-21.449. Section 21.449 also allows VA to take any appropriate actions specified in 2 CFR part 200 as remedies for non-compliance if non-compliance cannot be remedied. These measures help safeguard Federal funds and ensure appropriate use of the VEPFS grant funds awarded.

Administrative Procedure Act

In accordance with 5 U.S.C. 553(b)(B) and (d)(3), the Secretary finds that there is good cause to dispense with the opportunity for prior notice and comment and good cause to publish this rule with an immediate effective date. The Secretary finds that it is impracticable and contrary to the public interest to delay this rule for the purpose of soliciting prior public comment or to have a delayed effective date. As stated above, the Secretary is issuing this rule because there is a need to find new methods for rehabilitating Veterans with service-connected disabilities so that they become employable and are able to obtain and maintain suitable employment. This rulemaking provides the opportunity for the discovery of new methods for rehabilitating Veterans with service-connected disabilities with regard to employment using a strategy that will

save taxpayer money. However, the funding for a grant which would be awarded based on a NOFA to be published concurrently with this interim final rule, and which will be used to fund a project that achieves favorable employment outcomes for Veterans with a service-connected disability of post-traumatic stress disorder, is available only in this current fiscal year and must be obligated by September 30, 2016, if it is to be used for such purpose. To provide sufficient time to obligate the funds by September 30, 2016, the regulations established by this rulemaking must be in effect by August 9, 2016. Failure to obligate the funds by September 30, 2016, will cause the funds to expire.

Because this interim final rule will serve an important Veterans' need in an economical way, which would not be possible if publication were to be delayed, the Secretary finds that it is impracticable and contrary to the public interest to delay this rule for the purpose of soliciting advance public comment or to have a delayed effective date. Accordingly, VA is issuing this rule as an interim final rule with an immediate effective date. We will consider and address any comments received within 60 days of the date this interim final rule is published in the Federal Register.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing

costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action” requiring review by OMB, unless OMB waives such review, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA’s impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA’s Web site at <http://www.va.gov/orpm/>, by following the link for “VA Regulations Published From FY 2004 Through Fiscal Year to Date.”

Paperwork Reduction Act

This interim final rule includes provisions constituting collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) that require

approval by OMB. Specifically, sections 21.445, 21.447, and 21.448 contain collections of information under the Paperwork Reduction Act of 1995. VA has submitted the following information collection request to OMB for review and clearance in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. An emergency approval under the Paperwork Reduction Act is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulatory Affairs, Attention: Department of Veterans Affairs Desk Officer, Washington, DC 20530, with copies sent by mail or hand delivery to the Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; fax to (202) 273-9026; e-mail to www.Regulations.gov. Comments should indicate that they are submitted in response to "RIN 2900-AP72."

A regular review of this information collection will also be undertaken and announced in a future Federal Register notice indicating approval of this collection of information under the emergency review procedures of the Paperwork Reduction Act. All comments and suggestions, or questions regarding additional information, including obtaining a copy of the proposed information collection instrument with instructions, should be directed to Patrick Littlefield, Director, VA Center for Innovation, Department of Veterans Affairs, (08), 810 Vermont Ave, NW., Washington, DC, (202) 256-7176. We

request written comments and suggestions from the public and affected agencies concerning the proposed emergency collection of information.

The Department considers comments by the public on proposed collections of information in--

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The collections of information contained in 38 CFR 21.445, 21.447, and 21.448 are described immediately following this paragraph, under their respective titles.

Title: Grant Applications.

- Summary of collection of information: The new collection of information in proposed 38 CFR 21.445 would require applicants to submit a complete VEPFS grant application.
- Description of need for information and proposed use of information: The collection of information is necessary to award grants to eligible entities. VA will use this information to decide whether an applicant meets the requirements and satisfies the scoring criteria for award of VEPFS grants under 38 U.S.C. 3119.
- Description of likely respondents: Public and non-profit entities, including institutions of higher learning, that have an interest in serving Veterans with service-connected disabilities.
- Estimated number of respondents: 25 in FY 2016; 25 in FY 2017; 25 in FY 2018.
- Estimated frequency of responses: This is a one-time collection.
- Estimated average burden per response: 80 hours.
- Estimated total annual reporting and recordkeeping burden: 2000 hours in FY 2016; 2000 hours in FY 2017; 2000 hours in 2018.

Title: Quarterly Fiscal Reports.

- Summary of collection of information: The new collection of information in proposed 38 CFR 21.447(a)(1) and 21.448(a) would require each recipient to agree in the grant agreement to submit quarterly reports, which would include detailed records of the time expended and employment outcomes

accomplished in the provision of VEPFS activities, accounting of how the grant funds were used.

- Description of need for information and proposed use of information: The collection of information is necessary to determine compliance with the requirements for a grant.
- Description of likely respondents: Public and non-profit entities, including institutions of higher learning, that have an interest in serving Veterans with service-connected disabilities.
- Estimated number of respondents: 1 in FY 2017, up to 10 in FY 2018, up to 10 in FY 2019.
- Estimated frequency of responses: 4 quarterly reports per year for 5 years.
- Estimated average burden per response: 1 hour.
- Estimated total annual reporting and recordkeeping burden: 4 hours in FY 2017, 44 hours in FY 2018, 84 hours in FY 2019, 84 hours in 2020, 84 hours in 2021, 80 hours in 2022, 40 hours in 2023.

The regulatory terms also authorize VA to impose additional recordkeeping or reporting requirements as defined in the Terms and Conditions of the grant agreement (38 CFR 21.447(a)(2)), request additional information as defined in the Terms and Conditions of the grant agreement (38 CFR 21.447(a)(3)), and request additional reports in the Terms and Conditions of the grant agreement if necessary to fully and effectively assess program accountability and effectiveness (38 CFR 21.448(b)). Because these information collection requirements will depend on the terms and conditions of the grant agreement for a particular funding opportunity, VA is not seeking emergency approval

for these regulatory provisions at this time. Rather, VA will more clearly define and articulate these potential record-keeping and reporting requirements when it submits the PRA package when it undertakes a regular review of this collection.

Regulatory Flexibility Act

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601- 612. The Secretary estimates that, for any VEPFS grant program, no more than ten non-renewable grants will be awarded. For each grant awarded, usually one of each, but no more than a few, outcomes payors, project coordinators, evaluators, investors, and service providers will be involved with the grant program. The goal of these grants is to rehabilitate Veterans with service-connected disabilities with regard to employment. Thus, an insubstantial number of small entities will be affected by this interim final rule and, accordingly, there will not be a significant economic impact on such affected entities. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for

inflation) in any one year. This interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.116, Vocational Rehabilitation for Disabled Veterans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert D. Snyder, Chief of Staff, Department of Veterans Affairs, approved this document on July 11, 2016, for publication.

Dated: August 3, 2016.

Jeffrey Martin,
Office Program Manager,
Office of Regulation Policy & Management,
Office of the Secretary,
Department of Veterans Affairs.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

For the reasons stated in the preamble, VA amends 38 CFR part 21, subpart A as follows:

PART 21-VOCATIONAL REHABILITATION AND EDUCATION

Subpart A-Vocational Rehabilitation and Employment Under 38 U.S.C. Chapter 31

1. The authority citation for part 21, subpart A, continues to read as follows:

AUTHORITY: 38 U.S.C. 501(a), chs. 18, 31, and as noted in specific sections.

2. Add an undesignated center heading and §§ 21.440 through 21.449 to subpart A to read as follows:

VETERANS EMPLOYMENT PAY FOR SUCCESS GRANT PROGRAM

Sec.

21.440 Purpose and scope.

21.441 Definitions.

21.442 VEPFS grants – general.

21.443 Permissible uses of VEPFS grant funds.

21.444 Notice of funding availability.

21.445 Application.

21.446 Scoring and selection.

21.447 VEPFS grant agreement.

21.448 Recipient reporting requirements.

21.449 Recovery of funds.

§ 21.440 Purpose and scope.

Sections 21.440 through 21.449 establish and implement the Veterans Employment Pay for Success (VEPFS) grant program, which provides grants to eligible entities to fund outcomes payments for projects that are successful in accomplishing employment rehabilitation for Veterans with service-connected disabilities. These sections apply only to the administration of the VEPFS grant program, unless specifically provided otherwise.

(Authority: 38 U.S.C. 501(d), 3119)

§ 21.441 Definitions.

For the purposes of §§ 21.440 through 21.449, and any Notices of Funding Availability (NOFA) issued pursuant to §§ 21.440 through 21.449, the following definitions apply:

Applicant is an eligible entity that submits an application for a VEPFS grant announced in a NOFA.

Eligible entity is a public or nonprofit agency, to include institutions of higher learning.

Employment outcome is the employment or earnings of a participant in the intervention or control group member after the service period. Improving employment outcomes means creating positive impact in terms of these outcomes, where the results for individuals that receive the intervention are better than the results for a valid control group that did not receive the intervention.

Intervention is a service or technology that is provided to individuals and is intended to achieve certain results.

Outcomes payments are funds that are paid to an investor or service provider and that are released only for the achievement of outcomes, as compared to those of a control group, that meet target levels that have been agreed to in advance of the provision of intervention (i.e., if positive impact has been created by the intervention in terms of these outcomes). When investors have provided the upfront capital for the project, these payments generally cover repayment of the principal investment and provide a modest return on investment for any associated risks of paying for the intervention upfront .

Pay for Success (PFS) agreement is a multi-party agreement to deliver an innovative or evidence-based intervention intended to improve outcomes for a targeted population signed by the entities that constitute the project partnership.

Project partnership is a collaboration among entities that negotiate an agreement and execute a project to improve employment outcomes for Veterans with service-connected disabilities. The entities that may be involved in a project partnership include:

- (1)(i) Outcomes payor. Entity that receives a VEPFS grant and pays for outcomes of services that meet target levels that have been agreed to in advance of the provision of the intervention.
- (ii) Project coordinator. Facilitates, coordinates, and executes a PFS agreement to improve employment outcomes for Veterans with service-connected disabilities. With respect to other PFS projects, project coordinators are sometimes referred to as intermediaries.
- (iii) Evaluator. Independent entity that determines the impact of the services provided, including whether the services have resulted in employment outcomes that meet target levels that have been agreed to in advance of the provision of the intervention.
- (iv) Investor. Person or entity that provides upfront capital to cover costs of providing services/delivering an intervention and other associated costs before a determination has been made as to whether certain employment outcomes have been achieved at pre-set target levels.

(v) Service provider. Entity that delivers an intervention designed to achieve improved employment outcomes for Veterans with service-connected disabilities.

(2) A full project partnership is a project partnership that includes an outcomes payor, evaluator, investor (if the PFS agreement involves PFS financing), and service provider. A partial project partnership includes an outcomes payor and at least one of the following: evaluator, investor (if the PFS agreement involves PFS financing), or service provider.

Recipient is the entity that receives a VEPFS grant under §§ 21.440 through 21.449. The recipient is also the outcomes payor.

Secretary refers to the Secretary of Veterans Affairs.

Service-connected disability is a disability that is “service-connected” as defined in 38 CFR 3.1.

Social finance strategy is a method for securing financial resources using an investment approach that focuses on achieving positive social and/or environmental impact with some form of financial return.

Strong evidence constitutes results from previous studies, the designs of which can support causal conclusions (i.e., studies with high internal validity), that include enough of the range of participants and settings to support scaling up to the state, regional, or national level (i.e., studies with high external validity).

Veteran has the same definition as provided in 38 CFR 3.1.

Veterans Employment Pay for Success (VEPFS) agreement is a PFS agreement to deliver an innovative, evidence-based intervention intended to improve Veteran employment outcomes.

Veterans Employment Pay for Success (VEPFS) project is a project with a strategy for delivering a service with a goal to significantly improve a current condition with respect to unemployment of a target Veteran population and sufficient evidence to support the theory behind the project using a financial model that includes cost savings by funding the project only if it is successful.

Work-plan is a document that articulates tasks and milestones with regard to a particular project.

(Authority: 38 U.S.C. 3119)

§ 21.442 VEPFS grants – general.

(a) VA may award a VEPFS grant only to an eligible entity selected under § 21.446.

(b) The amount of Federal funding available to be awarded in a VEPFS grant will be specified in the NOFA.

(c) A VEPFS grant will be awarded for a minimum of 5 years and a pre-determined maximum number of years, beginning on the date on which the VEPFS grant is awarded, with the availability of no-cost extensions.

(d) As a condition of receiving a VEPFS grant, a recipient will be required to provide matching funds from non-Federal sources equal to or greater than the amount of Federal grant funds awarded, to be combined with the amount of Federal grant funds awarded and used as specified in § 21.443.

(e) A VEPFS grant award is not a Veterans' benefit. Decisions of the Secretary are final and not subject to the same appeal rights as decisions related to Veterans' benefits.

(Authority: 38 U.S.C. 3119)

§ 21.443 Permissible uses of VEPFS grant funds.

(a) VEPFS grant funds may be used only to fund outcomes payments if an intervention achieves outcomes at a pre-set target level that has been agreed to in a PFS agreement before service delivery begins for a PFS project with a goal to improve employment outcomes for Veterans with service-connected disabilities.

(b) To pay for the indirect costs of administering a grant, regardless of whether an intervention achieves outcomes at a pre-set target level, a recipient may:

- (1) Use a Federally approved indirect cost rate (a rate already negotiated with the Federal Government);
- (2) Use a 10% de minimis rate of modified total direct costs;
- (3) Negotiate an indirect cost rate for the first time; or
- (4) Claim certain costs directly following 2 CFR 200.413.

(Authority: 38 U.S.C. 3119, 2 CFR 200.414)

§ 21.444 Notice of funding availability.

When funds are available for a VEPFS grant, VA will publish a NOFA in the Federal Register and on Grants.gov (<http://www.grants.gov>). The NOFA will identify:

(a) The location for obtaining grant applications and the specific forms that will be required;

(b) The date, time, and place for submitting completed grant applications;

(c) The total amount and type of funds available and the maximum amount available to a single applicant;

(d) Information regarding eligibility and the scoring process;

(e) Any timeframes and manner for payments under the grant; and

(f) Other information necessary for the VEPFS grant application process, as determined by VA, including contact information for the VA office that will oversee the VEPFS grant.

(Authority: 38 U.S.C. 501(d), 3119)

§ 21.445 Application.

To apply for a VEPFS grant, eligible entities must submit to VA a complete application package in accordance with the instructions in the NOFA and include the forms specified in the NOFA. Applications will be accepted only through Grants.gov ([http:// www.grants.gov](http://www.grants.gov)). A complete grant application package, as further described in the NOFA, includes standard forms specified in the NOFA and the following:

(a) Project description, including a description of the intervention, the Veteran population to be served, and anticipated employment outcomes;

(b) Description of anticipated project partnership(s), including the responsibilities of each of the partner entities, the experience of any involved entities with serving Veteran populations, and other qualifications of the involved entities that may be

relevant in carrying out responsibilities of the project partnership. In procuring partners such as the project coordinator and investor, procurement standards set forth in 2 CFR 200.317 through 200.326 must be followed;

(c) A work plan, including a budget and timelines;

(d) Description of applicant's expertise or experience with PFS or other social finance strategies or experience administering programs that serve Veterans with disabilities;

(e) Documentation of applicant's ability and capacity to administer the project;

(f) Proof of matching funds already secured, ability to secure matching funds, or commitments received; and

(g) Any additional information as deemed appropriate by VA and set forth in the NOFA.

(Authority: 38 U.S.C. 3119)

§ 21.446 Scoring and selection.

(a) Scoring. VA will score only complete applications received from eligible entities by the deadline established in the NOFA. VA will score applications using the following criteria:

(1) Project description. Applicant identifies and describes an intervention that is designed to improve employment outcomes for Veterans with service-connected disabilities through a PFS agreement and demonstrates with strong evidence the ability of the intervention to meet objectives. Project description should explain and justify the

need for the intervention, and include concept, size and scope of the project, and the Veteran population to be served.

(2) Project partnership. Applicant provides a description of the partnership and the level of partnership (full, partial, or none) attained at the time of application.

(3) Work plan and budget. Applicant provides a work plan that describes in detail the timeline for the tasks outlined in the project description and proposed milestones. Applicant provides a budget that specifies amount of outcome payments and indirect and other relevant costs.

(4) Expertise and capacity. Applicant provides evidence of its past experience with PFS or other social finance strategies or experience administering programs that serve Veterans with disabilities, and of its ability and capacity to successfully administer the project.

(5) Match. Applicant provides evidence of secured cash matching (1:1) funds or of its ability to secure or commitments to receive such funds.

(b) Selection of recipients. All complete applications from eligible entities will be scored using the criteria in paragraph (a) of this section and ranked in order from highest to lowest total score. NOFA announcements may also clarify the selection criteria in paragraph (a). The relative weight (point value) for each selection criterion will be specified in the NOFA. Point values will be assigned according to the criterion's importance in ensuring the successful development and implementation of a VEPFS project. VA will award any VEPFS grant on the primary basis of scores but will also consider a risk assessment evaluation.

(Authority: 38 U.S.C. 3119)

§ 21.447 VEPFS grant agreement.

After an applicant is selected to receive a VEPFS grant in accordance with § 21.446, VA will draft a grant agreement to be executed by VA and the applicant. Upon execution of the VEPFS grant agreement, VA will obligate grant funds to cover the amount of the approved grant, subject to the availability of funding. The VEPFS grant agreement will provide that the recipient agrees, and will ensure that each subcontractor (if applicable) agrees, to:

(a) Operate the program in accordance with the provisions of §§ 21.440 through 21.449, 2 CFR part 200, and the applicant's VEPFS grant application;

(b) Comply with such other terms and conditions, including recordkeeping and reports for program monitoring and evaluation purposes, as VA may establish in the Terms and Conditions of the grant agreement for purposes of carrying out the VEPFS program in an effective and efficient manner; and

(c) Provide additional information that VA requests with respect to:

(1) Program effectiveness, as defined in the Terms and Conditions of the grant agreement;

(2) Compliance with the Terms and Conditions of the grant agreement; and

(3) Criteria for evaluation, as defined in the Terms and Conditions of the grant agreement.

(Authority: 38 U.S.C. 501(d), 3119)

§ 21.448 Recipient reporting requirements.

(a) Recipients must submit to VA a quarterly report 30 days after the close of each Federal fiscal quarter of the grant period. The report must include the following information:

(1) A detailed record of the time involved and resources expended administering the VEPFS program.

(2) The number of Veterans served, including demographics of this population.

(3) The types of employment assistance provided.

(4) A full accounting of VEPFS grant funds used or unused during the quarter.

(5) A comparison of accomplishments related to the objectives of the award.

(6) An explanation for any goals not met.

(7) An analysis and explanation for any cost overruns.

(b) VA may request additional reports in the Terms and Conditions of the grant agreement if necessary to allow VA to fully and effectively assess program accountability and effectiveness.

(Authority: 38 U.S.C. 501(d), 3119, 2 CFR 200.327-200.328)

§ 21.449 Recovery of funds.

If a recipient fails to comply with any Federal statutes or regulations or the terms and conditions of an award made under §§ 21.440 through 21.449, VA may impose additional conditions as specified in 2 CFR 200.207 or, if non-compliance cannot be

remedied, take any appropriate actions specified in 2 CFR part 200 as remedies for non-compliance.

(Authority: 38 U.S.C. 501(d), 3119, 2 CFR 200.338 through 200.342)

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